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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 SHELIA D. SPENSER and WILLIAM E.
9 SPENSER,

10 Plaintiffs,

11 v.

12 DEUTSCHE BANK, NATIONAL
13 TRUST COMPANY, as Trustee for
14 FFMLT, Trust 2005FF2, et al.,

Defendants.

CASE NO. C11-5599BHS

ORDER DISMISSING
COMPLAINT

15 This matter comes before the Court on the Court's order to show cause (Dkt. 12).
16 The Court has reviewed the Plaintiffs William E. Spenser and Shelia D. Spenser's
17 ("Spensers") response and the remainder of the file and hereby dismisses the Spensers'
18 remaining claims without prejudice.

19 **I. PROCEDURAL HISTORY**

20 On August 4, 2011, Plaintiffs William E. Spenser and Shelia D. Spenser
21 ("Spensers") filed a complaint against numerous parties. Dkt. 1. The Spensers' request
22 for relief is as follows:

23 We want to stay the foreclosure until we can find out who is the real
24 holder of the original note and deed of trust. The lender holding the original
25 note and deed of trust produce the originals with wet ink signatures for our
inspection.

26 *Id.* at 4.
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1 On August 18, 2011, Defendant Northwest Trustee Services, Inc. filed a motion to
2 dismiss. Dkt. 6. The Spensers did not respond. On September 30, 2011, the Court
3 granted the motion. Dkt. 8.

4 On October 31, 2011, Defendants Deutsche Bank, National Trust Company as
5 Trustee for FFMLT, Trust 2005FF2, and Bank of America, N.A.'s filed a motion to
6 dismiss. Dkt. 12. The Spensers did not respond. On December 28, 2011, the Court
7 granted the motion and ordered the Spensers to show cause as to the remaining
8 Defendants Wells Fargo, N.A. and Fairbanks Capital Select Portfolio. Dkt. 13.

9 On January 11, 2012, the Spensers responded alleging that the documents
10 presented by Defendants Deutsche Bank and Bank of America, N.A. were forged. Dkt.
11 14. The Spensers have not responded to any of their claims against Wells Fargo, N.A. or
12 Fairbanks Capital.

13 As of today's date, the Spensers have failed show that they have served either
14 Wells Fargo, N.A. or Fairbanks Capital. Moreover, the Spensers have failed to comply
15 with the Court's minute order requiring a joint status report by December 15, 2011. Dkt.
16 3. The Spenser have also not adequately replied to the Court's order to show cause as to
17 Defendants Wells Fargo, N.A. or Fairbanks Capital.

18 **II. FACTUAL BACKGROUND**

19 On or about November 11, 2004, in consideration for a mortgage loan, William
20 Spenser executed a promissory note (the "Note") in the amount of \$152,000, payable to
21 First Franklin Financial Corporation ("First Franklin"), and a Deed of Trust in favor of
22 First Franklin. *See* Dkt. 6 at 10-29 ("Deed of Trust"). The Deed of Trust names First
23 American as the trustee, and grants the trustee the power of sale in the event of default.
24 *Id.* The Deed of Trust was recorded on November 17, 2004 under Pierce County
25 Auditor's No. 200411170934, and encumbers a piece of real property located in Pierce
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1 County, commonly known as 1503 South 11th Street, Tacoma, Washington 98405 (the
2 “Property”). *Id.*

3 On or about September 2, 2008, First Franklin executed an Assignment of the
4 Deed of Trust (“Assignment”) whereby all beneficial interest in the Deed of Trust was
5 transferred to Defendant Deutsche Bank National Trust Company, as Trustee for FFMLT
6 Trust 2005FF2, Mortgage Pass-Through Certificates, Series 2005-FF2 (“Deutsche
7 Bank”). *See* Dkt. 6 at 30-31. The Assignment was recorded under King County
8 Auditor’s No. 201010060273. *Id.*

9 On or about October 9, 2008, as a result of the Spensers’ default on payments due
10 under the Note secured by the Deed of Trust, the Spensers were sent a Notice of Default.
11 *See* Dkt. 6 at 32-34.

12 On October 24, 2008, Deutsche Bank recorded an Appointment of Successor
13 Trustee naming Northwest Trustee Services, Inc. (“Northwest”) as successor trustee and
14 vesting Northwest with the powers of the original trustee. *See* Dkt. 6 at 35; *see also*
15 RCW 61.24.010(2). The Appointment of Successor Trustee was recorded under Pierce
16 County Auditor’s No. 200810240549. *Id.*

17 On or about March 15, 2011, Deutsche Bank, through its agent BAC Home Loans
18 Servicing, LP, executed a beneficiary declaration stating that

19 Deutsche Bank National Trust Company, as Trustee for the Holders of The
20 First Franklin Mortgage Loan Trust 2005FF2, Mortgage Pass-Through
21 Certificates, Series 2005-FF2 is the beneficiary (as defined by RCW
22 61.24.005(2)) and actual holder of the promissory note or other obligation
23 secured by the deed of trust or has the requisite authority under the RCW
24 62A.3-301 to enforce said obligation for the above mentioned loan account.

25 *See* Dkt. 6 at 36.

26 On April 29, 2011, Northwest recorded a Notice of Trustee’s Sale concerning the
27 Property under Pierce County Auditor’s No. 201104290278. *Id.* at 37-40. The Notice of
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1 Trustee's Sale references the parties to, and recording information of, the Deed of Trust,
2 and set a sale date of August 5, 2011. *Id.*

3 On August 5, 2011, the Trustee's Sale was postponed to September 30, 2011. *Id.*
4 at 41-42. On September 30, 2011, the Trustee's Sale was postponed until October 28,
5 2011. Dkt. 12, Exh. 7.

6 **III. DISCUSSION**


7 If a defendant is not served within 120 days after the complaint is filed, the Court
8 may dismiss the complaint without prejudice. Fed. R. Civ. P. 4(m). If a party fails to
9 comply with an order of the Court, the Court may also dismiss the action. Fed. R. Civ. P.
10 41(b).

11 In this case, the Spensers have failed to serve Defendants Wells Fargo, N.A. or
12 Fairbanks Capital within 120 days after they filed the complaint. The Spensers have also
13 failed to comply with the Court order to file a joint status report and the Court's order to
14 show cause as to their claims against Defendants Wells Fargo, N.A. or Fairbanks Capital.
15 Therefore, the Court dismisses without prejudice their claims against the remaining
16 Defendants Wells Fargo, N.A. and Fairbanks Capital.

18 **IV. ORDER**

19 Therefore, it is hereby **ORDERED** that the Spensers' claims against Defendants
20 Wells Fargo, N.A. and Fairbanks Capital are **DISMISSED without prejudice**. The
21 Clerk is directed to close this case.

22 DATED this 10th day of February, 2012.

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25 BENJAMIN H. SETTLE
26 United States District Judge
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